

1888, art. 60, sec. 4. 1860, art. 59, sec. 4. 1858, ch. 285, sec. 3.

4. No defendant shall be allowed on a second application for a mandamus to rely upon any matter by way of defense thereto which he might have relied on in his answer to a previous application for a mandamus by the same petitioner.

Ibid. sec. 5. 1860, art. 59, sec. 5. 1828, ch. 78. 1858, ch. 285, sec. 4.

5. The petitioner may plead to or traverse all and any of the material averments set forth in said answer and the defendant shall take issue or demur to said plea or traverse within five days thereafter; and such further proceedings shall thereupon be had in the premises for the determination thereof as if the petitioner had brought an action on the case for a false return.

Weber v. Zimmerman, 23 Md. 45. *Barney v. State*, 42 Md. 480. *Devin v. Belt*, 70 Md. 352. *Hooper v. New*, 85 Md. 565.

Ibid. sec. 6. 1860, art. 59, sec. 6. 1858, ch. 285, sec. 4.

6. If issue shall be joined on such proceedings, the same shall stand for trial on the second day of the next succeeding term of such court (in case such issue shall be joined in the recess of such court); and if such issue shall be joined during the session, then the same shall stand for trial during such term, unless sufficient cause shall be shown to the court by the party defendant for the continuance thereof, in which case such issue shall be heard on the second day of the next succeeding term of such court, unless the parties shall agree upon an earlier day.

Ibid. sec. 7. 1860, art. 59, sec. 7. 1858, ch. 285, sec. 4.

7. Such issue shall be tried by a jury if either party desire it; but they may be heard or determined by the court if both parties agree; and in case a verdict shall be found for the petitioner, or if the court upon hearing determine in favor of the petitioner, or judgment be given for him upon demurrer or for want of a plea, such petitioner shall thereupon recover his damages and costs as he might have done in an action on the case for a false return, to be levied by execution or attachment and a peremptory writ of mandamus shall be granted thereupon without delay against the defendant.

Booze v. Humbird, 27 Md. 1. *Upshur v. Baltimore City*, 94 Md. 760.

Ibid. sec. 8. 1860, art. 59, sec. 8. 1858, ch. 285, sec. 4.

8. If judgment shall be given for the defendant, he shall recover his costs of suit to be levied in manner aforesaid.